

63



June 9, 1995

Reply To  
Attn Of: S0-155

Mr. Stanford J. Nudelman  
2707 N.W. Nela Street  
Portland, Oregon 97210

Re: In the Matter of: S.J. Nudelman and Son,  
Docket No. 10-95-0012 (TSCA)

Dear Mr. Nudelman:

Enclosed is a proposed Consent Agreement and Consent Order for Payment of Civil Penalties (CACO). If the proposed CACO is acceptable, then please have it signed and return the original to me within 10 days of the date of this letter. A conformed copy will be returned to you after the Regional Administrator signs the CACO.

As we discussed, EPA requires documentation that the leaking light ballast at the facility has been properly disposed of prior to submitting this agreement to the Regional Administrator for final signature.

If you have any questions concerning the documentation or proposed CACO, please call me at (206) 553-1476.

Sincerely,

A handwritten signature in cursive script that reads "Margaret B. Silver".

Margaret B. Silver  
Associate Regional Counsel

Enclosure

RECEIVED

JUN 12 1995

PESTICIDES & TOXIC SUBSTANCES  
BRANCH-EPA REGION 10

1  
2  
3  
4  
5  
6  
7 BEFORE THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

8 In the Matter of: )  
9 S.J. NUDELMAN & SON, ) Docket No. 10-95-0012-TSCA  
10 Respondent. ) CONSENT AGREEMENT AND CONSENT  
11 ) ORDER FOR PAYMENT OF CIVIL  
12 ) PENALTIES  
13 )

14 I. PRELIMINARY STATEMENT

15 1. The United States Environmental Protection Agency  
16 ("EPA") initiated this proceeding for the assessment of a civil  
17 penalty pursuant to Section 16(a) of the Toxic Substances Control  
18 Act ("TSCA"), 15 U.S.C. § 2615(a), by issuing a complaint against  
19 Respondent, S.J. Nudelman & Son, on February 3, 1995.

20 2. The complaint charged Respondent with violation of  
21 the disposal requirements of the Polychlorinated Biphenyls  
22 ("PCBs") regulations, 40 C.F.R. § 761.60 and TSCA Section 15,  
23 15 U.S.C. § 2614.

24 3. As a result of information exchanged during  
25 settlement negotiations, EPA and Respondent have agreed to  
26 resolve this matter by executing this Consent Agreement and  
27 Consent Order ("CACO").

28 CONSENT AGREEMENT AND CONSENT ORDER  
FOR PAYMENT OF CIVIL PENALTIES  
DOCKET NUMBER 10-95-0012-TSCA

II. CONSENT AGREEMENT

4. Respondent admits the jurisdictional allegations contained in the complaint.

5. Respondent neither admits nor denies the factual allegations, findings, or conclusions of law contained in the complaint.

6. Respondent represents that it has properly disposed of the leaking light ballast at its facility in accordance with 40 C.F.R. Part 761.

7. Subsequent to issuance of the Complaint, Respondent provided EPA with tax returns and other financial information demonstrating that it does not have the ability to pay the proposed penalty. Accordingly, in conformance with the TSCA PCB Penalty Policy, EPA has agreed to reduce the penalty proposed in the Complaint to \$100.

8. Respondent agrees to the assessment of a civil penalty in the amount of \$100.

9. Respondent agrees not to claim or attempt to claim a federal income tax deduction or credit covering all or any part of the civil penalty paid to the United States Treasurer.

10. Respondent waives its right to request an adjudicatory hearing on any issue addressed in this CACO.

11. Respondent represents that it is duly authorized to execute this CACO and that the party signing this CACO on its behalf is duly authorized to bind Respondent to the terms of this CACO.

CONSENT AGREEMENT AND CONSENT ORDER  
FOR PAYMENT OF CIVIL PENALTIES  
DOCKET NUMBER 10-95-0012-TSCA



1 12. Respondent and EPA agree to the issuance of the  
2 Consent Order below.

3 III. CONSENT ORDER

4 IT IS HEREBY ORDERED and ADJUDGED as follows:

5 13. For the reasons set forth above, Respondent is  
6 hereby assessed a penalty in the amount of \$100.

7 14. Respondent shall pay the assessed penalty in full  
8 no later than 30 days from the date a conformed copy of this CACO  
9 is mailed to Respondent by mailing a certified check or money  
10 order, payable to the United States Treasurer, to:

11 U.S. Environmental Protection Agency  
12 (Region 10 Hearing Clerk)  
13 P.O. Box 360903M  
Pittsburgh, Pennsylvania 15251

14 A transmittal letter, indicating Respondent's name, complete  
15 address, and this case docket number must accompany the payment.

16 A copy of the check and of the transmittal letter shall be  
17 delivered or mailed to the Regional Hearing Clerk at the  
18 following address:

19 U.S. Environmental Protection Agency  
20 Region 10 Hearing Clerk  
1200 Sixth Avenue, SO-155  
Seattle, Washington 98101

21 15. Respondent's failure to comply with this CACO  
22 shall render the entire unpaid portion of the assessed penalty  
23 immediately due and payable, together with all accrued interest.  
24 Such failure may also subject Respondent to a civil action  
25 pursuant to TSCA Section 16(a)(4), 15 U.S.C. § 2615(a)(4), to  
26 collect any unpaid portion of the assessed penalty, together with

27 CONSENT AGREEMENT AND CONSENT ORDER  
28 FOR PAYMENT OF CIVIL PENALTIES  
DOCKET NUMBER 10-95-0012-TSCA

1 interest, handling charges and nonpayment penalties as set forth  
2 below. In any such collection action, the validity, amount, and  
3 appropriateness of the penalty is not subject to review.

4 16. Pursuant to 31 U.S.C. § 3717, Respondent shall pay  
5 the following amounts:

6 a. Interest. Any unpaid portion of the assessed penalty  
7 shall bear interest at the rate established by the Secretary of  
8 the Treasury pursuant to 31 U.S.C § 3717(a)(1) from the date a  
9 conformed copy of this CACO is mailed to Respondent; provided,  
10 however, that no interest shall be payable on any portion of the  
11 assessed penalty that is paid within 30 days of the date a copy  
12 of this CACO is mailed to Respondent.

13 b. Handling Charge. Pursuant to 31 U.S.C.  
14 § 3717(e)(1), a monthly handling charge of \$15 shall be paid if  
15 any portion of the assessed penalty is more than 30 days past  
16 due.

17 c. Nonpayment Penalty. Pursuant to 31 U.S.C.  
18 § 3717(e)(2), a nonpayment penalty of 6% per annum shall be paid  
19 on any portion of the assessed penalty that is more than 90 days  
20 past due, which nonpayment penalty shall be calculated as of the  
21 day the underlying penalty first becomes past due.

22 17. Each party shall bear its own costs, fees, and  
23 disbursements in this action.

24 18. This document is a "consent order" as that term is  
25 used in the Penalty Policy for the purposes of demonstrating a  
26

1 "history of prior such violations" as provided in Section 16 of  
2 TSCA, 15 U.S.C. § 2615.

3 DATED this \_\_\_\_ day of \_\_\_\_\_, 1995.

4  
5 \_\_\_\_\_  
6 CHUCK CLARKE  
Regional Administrator

7 Stipulated, Agreed, and  
8 Approved for Entry,  
Waiving Notice:

9  
10 S.J. NUDELMAN & SON

11 Dated: \_\_\_\_\_

12 \_\_\_\_\_  
(signature)

13 \_\_\_\_\_  
(name and title)

14 U.S. ENVIRONMENTAL PROTECTION  
15 AGENCY

16 Dated: \_\_\_\_\_

17 \_\_\_\_\_  
Margaret B. Silver  
Associate Regional Counsel

18  
19  
20  
21  
22  
23  
24  
25  
26  
27 CONSENT AGREEMENT AND CONSENT ORDER  
FOR PAYMENT OF CIVIL PENALTIES  
28 DOCKET NUMBER 10-95-0012-TSCA